

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SARA HARPER, <i>Plaintiff,</i>	:	CIVIL ACTION – LAW
	:	
	:	
vs.	:	No. 1:15-cv-02205-YK
	:	
ANTHONY MISITANO and POST ACUTE MEDICAL, LLC, <i>Defendants.</i>	:	ELECTRONICALLY FILED

**MOTION TO DISMISS**

Defendants, Post Acute Medical, LLC (“PAM”), and Anthony Misitano (“Misitano”), respectfully request, pursuant to Federal Rule of Civil Procedure 12(b)(6), that this Court dismiss certain claims/causes of action contained in the Complaint filed by Plaintiff, Sara Harper, as follows:

- (1) Defendant Misitano, an individual, should be dismissed from Count I of Plaintiff’s Complaint. There is no individual liability under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*
- (2) Plaintiff’s common law claim for Intentional Infliction of Emotional Distress (“IIED”) (Count II) should be dismissed. The IIED claim is barred by the Pennsylvania Workers’ Compensation Act (“PWCA”), 77 P.S. § 1, *et seq.* Moreover, the conduct alleged in the Complaint is insufficient, as a matter of law, to establish a viable IIED claim.
- (3) Plaintiff’s common law claim for Negligent Infliction of Emotional Distress (“NIED”) (Count III) should be dismissed. The NIED claim is barred by the PWCA.
- (4) Defendant Misitano, an individual, should be dismissed from Count IV of Plaintiff’s Complaint. Plaintiff has not set forth a claim for individual liability under the Pennsylvania Human Relations Act, 43 P.S. § 951, *et seq.*

In support of their Motion, Defendants rely upon their “Brief in Support of Motion to Dismiss,” which is filed contemporaneously herewith.

Respectfully submitted,

RHOADS & SINON LLP

By: /s/ John Martin

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*Attorneys for Defendants*

**CERTIFICATE OF NON-CONCURRENCE**

Plaintiff does not concur in the filing of this Motion.

/s/ John R. Martin

**CERTIFICATE OF SERVICE**

hereby certify that on January 19, 2016, a true and correct copy of the foregoing document was served electronically on the following:

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I understand that notice of this filing will be sent to all parties of record by operation of the Court's electronic filing system, and that parties may access this filing through the Court's system.

/s/ John R. Martin